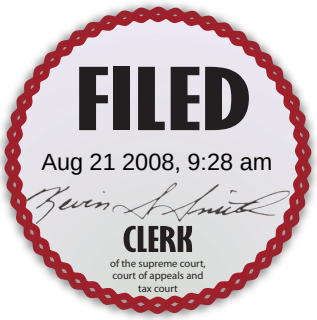

ATTORNEY FOR APPELLANT:

RUSSELL T. CLARKE, JR.
Emswiller, Williams, Noland & Clarke, P.C.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

JUDY M. TYRRELL
Tabbert Hahn Earnest & Weddle, LLP
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KEVIN M. GERTISER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 29A02-0712-CV-1069
	)	
ANN T. GERTISER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel S. Pfleging, Judge
Cause No. 29D02-0303-DR-200

August 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Kevin Gertiser ("Husband") appeals the decree dissolving his marriage to Anne Gertiser ("Wife"). He asserts his motion to correct error in the original decree should not have been deemed denied even though more than thirty days passed between the date of the hearing and the court's ruling; the trial court should not have ordered him to co-sign a mortgage Wife would obtain after the dissolution; and Wife was not entitled to incapacity maintenance.

We affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

The Gertisers' marriage was dissolved on June 25, 2007. The decree awarded Wife sixty percent of the marital estate and incapacity maintenance pursuant to Ind. Code § 31-15-7-2(1), and it ordered the marital residence be sold. Husband was to "cooperate by signing all documents necessary in order to jointly assume responsibility for Wife's new mortgage" if the terms of the mortgage met certain conditions. (App. at 14.) On July 22, Husband brought a motion to correct error. The trial court conducted a hearing on October 15, then on November 19 granted in part and denied in part the motion and issued an amended decree.

In the amended decree Wife was awarded sixty-one per cent of the marital estate. The court directed Husband to transfer the marital residence to Wife and to pay the first mortgage. Wife would pay the second mortgage.

DISCUSSION AND DECISION

1. Effect of Amended Decree

The trial court held a hearing on Husband's motion to correct error on October 15, 2007. At the hearing both counsel agreed to provide proposed orders within ten days, and the court issued a written entry that day saying, "Each counsel to submit proposed Order within 10 days." (App. at 32.) On November 19, the trial court granted in part and denied in part the motion to correct error, and issued the amended decree the same day. Husband argues the parties' agreement to submit proposed orders within ten days amounted to an "implicit agreement to extend the trial court's authority to rule on the motion" by ten days. (Appellant's Br. at 8.) It did not.

Ind. Trial Rule 53.3 provides a motion to correct error is deemed denied if the court fails to rule on it within thirty days after it was heard. That time limitation for ruling on a motion to correct error does not apply where the parties or their counsel stipulate or agree on record that the time limitation will not apply, or the court files an entry in the cause advising all parties of the extension. Such entry must be in writing, must be filed before the expiration of the initial time period for ruling on the motion, and must be served on all the parties. The record does not reflect any such stipulation or entry.

In *Paulsen v. Malone*, 880 N.E.2d 312, 313-14 (Ind. Ct. App. 2008), we determined Malone's motion to correct error was deemed denied sixteen days before an amended final judgment was entered, such that the trial court abused its discretion by entering an amended judgment. Malone argued the trial court left the record of the

hearing on the motion to correct error open by asking Malone to provide additional authorities, so the thirty-day period did not begin to run until both parties had submitted their additional authority to the trial court.

We disagreed:

> The plain language of this rule states that the allotted time period to rule on the motion begins to run at the conclusion of the hearing itself, and not at some later date. Nothing in the language of the rule suggests that the matter is still being "heard" after the hearing terminates and while supplemental authority is being offered. We therefore conclude that here, the case was "heard" on the date of the June 18, 2007 hearing and not after the parties submitted their additional authority.

Id. at 314-15. We accordingly concluded the trial court had lost its power to rule on the motion to correct error, the amended final judgment was void, and the original judgment entered on October 16, 2006 controlled. *Id*. at 315. Similarly, in the case before us the trial court's request for findings and conclusions did not leave "the record of the hearing on the motion to correct error open," and the trial court could not issue an amended decree.

2. Order to Co-sign Wife's Mortgage

In the original decree, the trial court ordered the marital residence be sold and Wife make diligent efforts to find a replacement residence. Husband was ordered to "cooperate by co-signing all documents necessary in order to jointly assume responsibility for Wife's new mortgage," (App. at 14), which order he characterizes as one to "co-sign a debt to jointly assume Wife's new mortgage." (Appellant's Br. at 14.)

Marital property includes property owned by either spouse prior to the marriage. Ind. Code § 31-15-7-4(a)(1). It includes both assets and liabilities. *Gard v. Gard*, 825

N.E.2d 907, 910 (Ind. Ct. App. 2005). In a dissolution proceeding, the trial court is mandated by statute and case law to divide the assets and liabilities in which the parties have a vested present interest. *Id*. The trial court may not divide assets that do not exist "*just as it may not divide liabilities which do not exist.*" *Id*., *quoting In re Marriage of Lay*, 512 N.E.2d 1120, 1123-24 (Ind. Ct. App. 1987) (emphasis in original).

Generally, the marital pot closes on the date the dissolution petition is filed. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1192 (Ind. Ct. App. 2001). Therefore, debts incurred by one party after the dissolution petition has been filed are not to be included in the marital pot. *Id*. In *Sanjari*, Father wanted the children enrolled in a private school. He executed a contract for tuition payments after the date of separation. We found no abuse of discretion in the trial court's refusal to include an individual contractual obligation, incurred after the date of marital separation, within the marital pot. *Id. And see Fuehrer v. Fuehrer*, 651 N.E.2d 1171, 1173 (Ind. Ct. App. 1995) (generally, the marital estate closes on the date the dissolution petition is filed, so debts incurred by one party after that point are not to be included), *reh'g denied*, *trans. denied*.

Wife offers Ind. Code § 31-15-7-4 to support her premise the dissolution court "may order one spouse to . . . become liable for the other spouse's post-dissolution debt, and may even order the spouse to pay the other's post-dissolution debt." (Appellee's Br. at 5.) She characterizes the statute as "allow[ing] the custodial parent to keep the marital residence without refinancing a joint mortgage."[1] *Id*. There is no such language in the

[1] Wife offers *Krasowski v. Krasowski*, 691 N.E.2d 469 (Ind. Ct. App. 1998), in support of the same premise. She offers no pinpoint citation to help us determine where, within that decision, support for her

statute, and there is not, in the case before us, a "custodial parent." We accordingly decline to hold that section authorized this dissolution court to order Husband to assume liability for Wife's post-dissolution mortgage debt.

As liability for Wife's prospective mortgage debt should not have been included in the dissolution decree, we reverse that part of the decree and remand so the trial court may re-determine the disposition of the marital home.[2]

3. Incapacity Maintenance

In both decrees Wife was awarded maintenance[3] payments from Husband of $1182.50 per month. Husband argues the evidence does not support the award. It does, and we accordingly find no error.

If the court finds a spouse is physically or mentally incapacitated to the extent the ability of the incapacitated spouse to support herself is materially affected,[4] the court may

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contention may be found, or whether support can be found in that decision at all. We direct Wife's counsel to Ind. Appellate Rule 22, which provides that citations to decisions in briefs are to follow the format put forth in the current edition of a Uniform System of Citation (Bluebook). When referring to specific material within a source, a citation should include both the page on which the source begins and the page on which the specific material appears. Uniform System of Citation Rule 3.2 (18th ed. 2005). As we have often noted, we will not, on review, sift through the record to find a basis for a party's argument. Nor will we search through the authorities cited by a party in order to try to find legal support for its position. *E.g., Haddock v. State*, 800 N.E.2d 242, 245 n.5 (Ind. Ct. App. 2003).

[2] Wife asserts: "Husband fails to recognize that the trial court did **not** include Wife's post-dissolution mortgage in the marital estate." (Appellee's Br. at 6) (emphasis in original). That is, of course, technically true – the mortgage was, after all, "post-dissolution" and could not have been "included" because it apparently did not exist when the decree was entered. However, the court did improperly purport to impose on Husband liability for a debt that would not be incurred until after the dissolution.

[3] In the amended decree, the trial court referred to the payments as "rehabilitative" maintenance, which Husband correctly notes cannot exceed three years from the date of the decree. Ind. Code § 31-15-7-2(3). However, the court also specified the maintenance was awarded under Ind. Code § 31-15-7-2(1), which provides for "incapacity" maintenance. Husband presumes "the trial court's characterization as *rehabilitative* maintenance is a scrivener's error," (Appellant's Br. at 17) (emphasis in original), and so do we.

find maintenance for the spouse is necessary during the period of incapacity. Ind. Code § 31-15-7-2(1). The power to award maintenance is wholly within the trial court's discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. *Augspurger v. Hudson*, 802 N.E.2d 503, 508 (Ind. Ct. App. 2004). "The presumption that the trial court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal." *Id.* (quoting *Fuehrer*, 651 N.E.2d at 1174).

The trial court entered findings of fact from which it concluded Wife was entitled to maintenance. When a trial court enters such special findings, we will not set them aside unless they are clearly erroneous and we will give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Id*. at 508-09. The findings are clearly erroneous if the record is devoid of facts or inferences to support them, or if they do not support the judgment. *Id*. at 509. Thus, when reviewing special findings, we do not reweigh the evidence or reassess the credibility of witnesses. *Id*.

The court found Wife suffers from severe myopia, optic nerve and macular degeneration, and she is "effectively blind." (App. at 6, 12.) She uses a guide dog and cannot drive. She can read if material is held an inch or two from her face. From this, the court concluded her ability to support herself is materially affected.

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[4] Husband asserts the trial court's findings are insufficient to establish Wife is "physically incapacitated from working," (Appellant's Br. at 7), and notes Wife "presented no testimony that she was incapable of working." (Appellant's Reply Br. at 9.) Those statements appear correct, but that is not the standard for determining whether maintenance may be awarded. The trial court needed only find Wife's ability to support herself was "materially affected." Ind. Code § 31-15-7-2(1).

Wife had done some medical transcription work in 2005, but earned less than $1000 that year. She needed Husband's assistance to bill for her work, and that assistance was no longer available after the separation. She testified she could continue doing medical transcription work if her computer was properly programmed, and she was physically able to do the work, but it was only "minimally" likely she could find such work as it was being outsourced to India. (App. at 49.) She testified she had looked for work about a dozen times, and had other skills: "I'm great with children. I have a great administrative background, telephones, clerical, any type of administrative that way." (*Id*.)

Husband relies on *Matzat v. Matzat*, 854 N.E.2d 918, 920 (Ind. Ct. App. 2006), where we found insufficient evidence to support an award of maintenance despite noting "our research has not yielded a single, reported case in which this court has reversed the trial court's grant or denial of an incapacity maintenance award on the basis of evidentiary sufficiency."

There, the wife who had been awarded maintenance testified she had back problems for which she had sought medical treatment and she left her job as a certified nurse because she could not lift patients. She claimed she had trouble standing, sitting, or walking for extended periods of time. She presented no medical evidence to support her claim of incapacity, and we held the trial court could determine from the evidence presented only that she "suffered a back problem of unknown origin. It could not determine that she was physically incapacitated such that her ability to support herself was materially affected." *Id*. at 921.

The wife in *Matzat* had made a claim for social security disability benefits that had been denied. A second claim was pending at the time of the final hearing. We distinguished *Paxton v. Paxton*, 420 N.E.2d 1346, 1348 (Ind. Ct. App. 1981), in which we held medical testimony was not required to support an award where wife testified that she was receiving social security disability due to her rheumatoid arthritis and uncontrolled hypertension and that she was unable to hold a job because of her disability. "Paxton presented a stronger case than here because there the wife was receiving social security disability and unequivocally said she was not able to hold a job because of her disability." 854 N.E.2d at 920.

Wife in the case before us offered testimony suggesting she believed she was capable of performing some jobs. However, the court also heard testimony she had applied in 2000 for Social Security Disability benefits, had been approved, and was receiving about $190.00 per week in disability income. While the trial court had uncontradicted evidence before it that Wife was not completely incapable of working, we cannot say it abused its broad discretion when it determined her ability to support herself was "materially affected" and awarded her incapacity maintenance.

Affirmed in part, reversed in part, and remanded.

VAIDIK, J., and MATHIAS, J., concur.